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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,336	03/23/2001	Anthony Nicolas Kalloo	2784-25	4418

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NIXON & VANDERHYE, PC
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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,336

Applicant(s)

KALLOO ET AL.

Examiner

david shay

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on January 7, 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19, 21, 22 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21, 22 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date January 7, 2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 3739

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 7, 9, 12, 13, 15-17, 22, and 36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Mesallum.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 8, 10, 11, 14, 18, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesallum in combination with Mizuno et al Vander Salm et al. Mesallum teaches a method such as claimed except insufflations and surgery in the peritoneal cavity. Mizuno teaches using a trans-esophageal route to access organs in the peritoneal cavity. Vander Salm et al teach the desirability of insufflating the peritoneal cavity during endoscopic surgery. It would have been obvious to the artisan of ordinary skill to employ transeophageal route to

Art Unit: 3739

access the peritoneum since this is less invasive and to employ insufflation in the endoscopic procedure since this provides a working space, thus producing a method such as claimed.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesallum in combination with Mizuno et al, and Shermeta. The teachings of Mesallum and Mizuno et al and the motivations for the combination and modification thereof are as set forth above. Shermeta teach the use of a dual balloon fixation method for devices inserted through the stomach wall. It would have been obvious to the artisan of ordinary skill to employ the dual balloon fixation method of Shermeta, in the combined method of Mesallum and Mizuno et al, since this would enable the endoscopic device to be fixed while the laproscopic instrument is manipulated into position, thus producing a method such as claimed.


Claims 1, 10, 11, 14, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesallum in combination with Mizuno et al, and Wilson-Cook Brochure. The teachings of Mesallum and Mizuno et al and the motivations for the combination and modification thereof are as set forth above. Wilson-Cook Brochure teaches the use of a retractable needle knife in an endoscopes procedure. It would have been obvious to the artisan of ordinary skill to employ a retractable needle knife in the combined method of Mesallum and Mizuno et al since this would enable the removal of bile stones and further to remove an organ e.g. the gall bladder since this is sometimes necessitated when stone removal is intended thus producing a method such as claimed.

Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mesallum in combination with Mizuno et al, and Yoon ('088). The teachings of Mesallum and Mizuno et al and the motivations for the combination and modification thereof are as set forth above. Yoon

Art Unit: 3739

('088) teaches that treatment of an organ can include the removal thereof. It would have been obvious to the artisan of ordinary skill to remove the organ in the combined method of Mesallum and Mizuno et al thus producing a method such as claimed.

Any inquiry concerning this communication should be directed to david shay at telephone number (571) 272-4773

A handwritten signature in black ink, appearing to read "David Shay", with a stylized flourish at the end.

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330

Shay/PJ

04/08/05